

CSD 1160 [05/15/03]

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File RCO # 7777.34154

**UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

Carlos J. Estrada, Jr., Maria L. Estrada

Debtor.

BANKRUPTCY NO. 12-05376-LT7

US Bank National Association, as Trustee for the holders of Bear  
Stearns

Moving Party

RS NO. RCO-1

Carlos J. Estrada, Jr., Maria L. Estrada, Christopher R. Barclay

Respondent(s)

**MOTION FOR RELIEF FROM AUTOMATIC STAY** **REAL PROPERTY**       **PERSONAL PROPERTY**

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter  7  11  12  13 was filed on April 16, 2012.  
Conversion Date \_\_\_\_\_
2. Procedural Status:
  - a.  Name of Trustee Appointed (if any): Christopher R. Barclay
  - b.  Name of Attorney of Record for Trustee (if any): \_\_\_\_\_
  - c.  (Optional) Prior Filing Information:  
Debtor has previously filed a Bankruptcy Petition on: \_\_\_\_\_.  
If applicable, the prior case was dismissed on: \_\_\_\_\_.
  - d.  (If Chapter 13 case): Chapter 13 Plan was confirmed on \_\_\_\_\_ or a confirmation hearing is set for \_\_\_\_\_.

Movant alleges the following in support of its Motion:

1.  The following real property is the subject of this Motion:
  - a. Street address of the property including county and state:  
**2121-2123 Harrison Avenue  
San Diego, CA 92113  
San Diego County**
  - b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):  
**Other Single Family Residence**
  - c. Legal description of property is attached as Exhibit A.

CSD 1160 (Page 2) [05/15/03]

d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.

e. \*Fair market value of property as set forth in the Debtor's schedules: \$ 203,578.00.

f. \*Nature of Debtor's interest in the property:  
Sole Owner

2.  The following personal property is the subject of this Motion (describe property):

a. Fair market value of property as set forth in the Debtor's schedules: \$ \_\_\_\_\_.

b. Nature of Debtor's interest in the property:

3. \*Fair market value of property according to Movant: \$ 203,578.00.

4. \*Nature of Movant's interest in the property: Deed of Trust

5. \*Status of Movant's loan:

a. Balance owing on date of Order for Relief: \$ 497,107.03  
b. Amount of monthly payment: \$ 2,684.59

c. Date of last payment: December 12, 2011

d. If real property,  
i. Date of default: September 1, 2011

ii. Notice of Default recorded on: \_\_\_\_\_

iii. Notice of Sale published on: \_\_\_\_\_

iv. Foreclosure sale currently scheduled for: \_\_\_\_\_

e. If personal property,  
i. Pre-petition default: \$ \_\_\_\_\_ No. of months: \_\_\_\_\_

ii. Post-petition default: \$ \_\_\_\_\_ No. of months: \_\_\_\_\_

6. (If Chapter 13 Case, state the following:)

a. Date of post-petition default: \_\_\_\_\_  
b. Amount of post-petition default: \$ \_\_\_\_\_

7. Encumbrances:

a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1st: Movant	470,000.00	21,476.72	8	2,684.59	1
2nd:					
3rd:					
4th:					
Totals for all Liens:	\$ 470,000.00	\$ 21,476.72		\$ 2,684.59	

b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant:

See attached page, if necessary.

8. Relief from the automatic stay should be granted because:

- Movant's interest in the property described above is not adequately protected.
- Debtor has no equity in the  real property  personal property described above and such property is not necessary to an effective reorganization.
- The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or \_\_\_\_\_ days as ordered by this court) have passed since entry of the order for relief in this case, and
  - the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
  - the Debtor/Trustee has
    - not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
    - commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
- \*Other cause exists as follows (specify):  See attached page.

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a)(5) and (6).

Movant attaches the following:

- Other relevant evidence:  
Exhibit A (Legal description); Exhibit B (Note/Deed); Exhibit C (Schedules A and D); Exhibit D (Assignment of Deed of Trust)
- (Optional) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

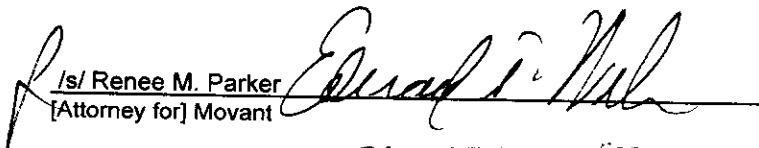
Relief as requested.

Other:

- a) the Order for relief be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code;
- b) the 14-day provided by Bankruptcy Rule 4001 (a)(3) be waived;
- c) if relief from stay is not granted, Movant respectfully requests the Court to order adequate protection.

Dated:

7/3/12

  
 /s/ Renee M. Parker  
 [Attorney for] Movant

Edward T. Weber, Esq.